

GENERAL TERMS AND CONDITIONS

Agreement. Seller agrees that the only terms and conditions that are applicable to this contract are those issued by the County of Sutter, California, (County) and no other terms and conditions shall be binding upon the parties. Any additional or different terms or conditions offered by the Seller are hereby rejected. If a court of competent jurisdiction holds any part of this contract invalid, the balance shall retain its full force and effect. This purchase order, and any additional documents incorporated herein by reference, set forth the entire agreement between Seller and County.

Artwork, Designs, etc. (a) Upon completion or cancellation of this order, Seller shall return all designs, drawings, and blueprints (Artwork) that are furnished by the County for the production of the goods. Artwork shall not be used by the Seller in the production of materials for any third party without express written consent of the County. Artwork involves valuable property rights of County and shall be held confidential by Seller. (b) Unless otherwise agreed herein, at its own cost Seller shall supply all materials, equipment, tools and facilities to perform the work described herein. **Any materials, equipment, tools, artwork, designs, or other properties furnished by County or specifically paid for by County shall be County's property.** Any such property shall be used only in filling orders from County and may on demand be removed by County without charge. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same while in Seller's custody. Seller shall at its cost store and maintain all such property in good condition and repair. County makes no warranties of any nature with respect to any property it may furnish to Seller hereunder.

Assignment. Seller shall not delegate or subcontract any duties or assign any rights or claims under the purchase order without County's prior written consent.

Authorized Distributor. Seller shall be an authorized distributor of the product he sells or he must be able to show substantial evidence that the product manufacturer will honor the manufacturer's warranty of the product when purchased by the County from the Seller. The County reserves the right to cancel this order if the manufacturer refuses to honor the product warranty.

Backorders & Product Substitution. The seller shall not backorder any item nor make any product substitution without prior written authorization from the Purchasing Division.

Changes in Contract. It is mutually understood and agreed that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the County, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties, shall be binding. The County will not compensate Seller for goods not authorized by written Change Order. The County shall have the right to revoke, amend, or modify this order at any time by issuance of a written Change Order. Seller's failure to respond within ten (10) days to a written Change Order shall constitute Seller's acceptance of the change without price or other adjustment.

Compliance with Laws – Goods and Services. All goods and services shall comply with all current federal, state, and other laws relative thereto, including but not limited by those set forth by the Occupational Safety and Health laws of this state. Seller further agrees to indemnify, defend, and hold the County harmless for any failure to so conform. If, in connection with the specified goods, Seller is required to comply with the Occupational Safety and Health's hazardous communications standard, SELLER SHALL PROVIDE COPIES OF APPLICABLE MATERIAL SAFETY DATA SHEETS (MSDS) AT THE TIME OF DELIVERY OF THE GOODS.

Default by Seller/Breach of Contract. The County reserves the right to cancel at any time, any or all items not delivered as directed and within the time specified. In case of default by Seller, the County may procure the goods or services from any source available and may charge the difference between the price named in the contract or purchase order and the actual cost thereof to the Seller.

Delivery - Time is of the Essence. Time is of the essence of this contract and failure to deliver the goods or services specified herein shall be a material breach of this contract. If Seller cannot deliver the goods within the specified time, Seller shall promptly notify County of the earliest possible date for delivery. Notwithstanding such notice, County may terminate this order or any part thereof without liability except for goods previously delivered and accepted. County's receipt or acceptance of all or part of a nonconforming delivery shall not constitute a waiver of any claim, right or remedy County has under this order or applicable law.

F.O.B. Point and Title. The F.O.B. point for this order shall be "F.O.B. Destination" unless otherwise shown on the face of this purchase order. Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by Seller, or his agent, shall pass to the County upon the County's inspection and acceptance of such items at the County's premises. Supplier

warrants that all articles, materials, and work are free and clear of all liens and encumbrances whatsoever, and that Supplier has a good and marketable title to same, and Seller agrees to hold County free and harmless against any and all claimants to said article, material, or work. Transportation charges shall be prepaid by the Seller and added to the invoice. **THE ORIGINAL FREIGHT BILL MUST BE ATTACHED TO THE SHIPMENT.** No charges for transportation, containers, packing, handling, or inside delivery will be allowed unless specifically stated in the purchase order.

Force Majeure. Neither party to the Purchase order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. County may terminate the purchase order upon written notice after determining such delay or default will reasonably prevent successful performance of the order.

Hold Harmless. Seller shall indemnify, defend, and hold harmless the County, and its officers, officials, employees and agents, from and against any and all claims asserted, liability, loss damage, expense, costs, including without limitation costs and fees of litigation, of every nature arising out of, directly or indirectly, or in connection with this contract or the acts or omissions of Seller, Seller's subcontractors, employees, representatives, agents and invitees including, but not limited to, performance of the work hereunder or failure to comply with any of the obligations contained herein, except such loss or damage which was caused by the established active negligence of County or the established sole negligence or willful misconduct of County, its officers, officials, employees and agents. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to such liability, loss, damage, expense or cost. The Seller agrees that the use of any public streets and improvements that are part of or subject to this contract shall be at all times, before final acceptance by the County, the sole and exclusive risk of Seller. The Seller further specifically agrees that he shall indemnify and hold County free of any liability for any accident, loss, or damage to the work that is the subject of this contract before its completion and acceptance by the County.

Inspection, Testing, & Approval. Goods shall be received subject to County inspection, testing, approval, and acceptance at County premises notwithstanding any prior payment for such goods. Goods rejected by County as not conforming may be returned to Seller at Seller's risk and expense, and shall not be replaced by Seller without written authorization from County. Substitutions are not permitted except upon specific written authorization of County.

Insurance. When specified herein and/or when specified by bid or quote documents that are incorporated herein by reference, maintenance of required insurance coverage is a material element of this contract and failure to maintain or renew coverage or to provide evidence of renewal shall be a material breach of this contract.

Invoice. Seller shall bill the County in arrears after goods have been shipped and work has been performed. Invoice each purchase order separately, and the purchase order number must appear on all invoices and packing slips. Items on this purchase order must not be billed with those on other purchase orders. Goods shall be itemized as shown on this order, and tax must be shown as a separate line item. Out-of-state Sellers must indicate their State of California Use Tax Permit number when collecting tax. Mail one original invoice to: County of Sutter, Purchasing, 146 Garden Hwy, Yuba City, CA 95991.

Law and Venue. This contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in **Sutter County, California**, and the parties hereto agree to and do hereby submit to the jurisdiction of such court.

Packaging, Packing Materials, and Manner of Shipping. Goods shall be packaged, marked, and otherwise prepared for shipment by Seller in suitable containers, in accordance with sound commercial practices.

Packing Slip. All shipments of goods shall be accompanied by a packing slip identifying the Seller and describing the goods and quantity shipped.

Patent Indemnity. Seller agrees to hold harmless and fully indemnify the County of Sutter, California, its officers, agents, servants, and employees from all damages or claims for damages, and costs or expenses in law or equity, including costs and expenses incurred, for the use of any invention or discovery and for the infringement of any Letters Patent, not including liability arising pursuant to Section 183 U.S. Code, Title 35 (1952), prior to issuance of Letters Patent, occurring in the performance of this order or arising by reason of the use or disposal by or for the account of the County of items manufactured or supplied under this order.

Payment. Payment terms for this order shall be net 30 days unless otherwise specified herein.

Payment Terms. Payment terms shall be net thirty- (30) days from the date of receipt of invoice or acceptance of goods, whichever occurs last. If County is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods by County, whichever occurs last. Delay caused by correction of errors and omissions shall extend the discount period and shall be just cause for withholding settlement without loss of cash discount by County. County may set off any amount owed by Seller to County against any amount owed by County to Seller under the Purchase order. County shall endeavor to pay each invoice within thirty- (30) days, but shall not be responsible to Seller for additional charges, interest, or penalties due to failure to pay within that period.

Permits, Licenses, and Other Requirements. (A) Seller shall comply with all applicable existing and future governmental laws, municipal ordinances, codes, rules, regulations, programs, plans and orders in the performance of the Purchase order. (B) Seller shall be in full compliance with all permit or licensing requirements in connection with the manufacture, sale, shipment, and/or installation of the goods specified in the Purchase order.

Prices. All prices shall be as stated in the Purchase order and are firm and not subject to escalation.

Quantities. Seller shall deliver the exact quantities specified in the purchase order. County reserves the right to reject incomplete deliveries and to return at Seller's risk and expense excess quantities delivered.

Rejection of Disclaimers of Warranties. THE COUNTY OF SUTTER, CALIFORNIA, REJECTS ANY DISCLAIMER BY SELLER OF ANY WARRANTY, STANDARD, IMPLIED OR EXPRESS UNLESS SPECIFICALLY AGREED TO ON THE FACE OF THIS PURCHASE ORDER, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Severability. If any provision of the Purchase order is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Purchase order did not contain the particular provision held to be invalid.

Shipping and Handling Charges. No shipping, transportation, or handling charges will be allowed unless specified on the face of this order (see "FOB Point and Title" above.)

Taxes. This order is subject to California Sales Tax. The County is exempt from Federal Excise Tax and will provide an exemption certificate upon request.

Termination for Convenience. The County reserves the right to terminate this contract WITHOUT CAUSE and without penalty immediately after ten- (10) days written notices, unless otherwise specified.

Termination for Default. In addition to any other remedies or rights it may have by law, the County may by written notice terminate this order immediately and without penalty for Seller's DEFAULT, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, the County may purchase or otherwise secure materials, supplies, or services and, except as otherwise provided therein, Seller shall be liable to the County for any excess costs occasioned by the County of Sutter, California, thereby.

(No) Waiver. Failure of County to enforce any provision of the Purchase Order shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of the Purchase Order.

Warranties. In addition to any other express or implied warranties, Seller warrants that all goods delivered under this order will be (1) new, suitable for the use intended; (2) of the grade and quality specified; (3) free from all defects in design, material and workmanship; (4) in conformance with all samples, drawings, descriptions and specifications furnished by County; and (5) in compliance with all applicable federal, state, and local laws and regulations. These warranties shall not be deemed to exclude Seller's standard warranties or other rights or warranties that County may have or obtain. At its expense and option, Seller shall replace or repair any goods not conforming to the foregoing warranties. If, after notice, Seller fails promptly to replace or repair any such goods, Seller shall promptly refund to County the full purchase price paid by County for such goods.